

# CUPP & CUPP, P.C.

## ATTORNEYS AT LAW

TIMOTHY E. CUPP

JENIFER D. CUPP

1951-D EVELYN BYRD AVENUE

POST OFFICE BOX 589

HARRISONBURG, VIRGINIA 22803-0589

TELEPHONE (540) 432-9988

FACSIMILE (540) 432-9557

cupplaw@comcast.net

November 27, 2013

Virginia M. Sadler, Esquire  
Jordan, Coyne & Savits, LLP  
10509 Judicial Drive, Suite 200  
Fairfax, Virginia 22030

Re: *Bradley v. Wynn's, et al.*  
JAMS Reference No.: 1410006374

Dear Virginia:

We received the Motion to Dismiss filed in JAMS on behalf of Wynn's. We agree that if Wynn's did not voluntarily and knowingly enter into an agreement for arbitration, then it has a right to have the claim heard against it in a court of law. If you had raised this while we were discussing a possible settlement, we would have sent you the attached portion of Wynn's service contract. In particular, see the "Arbitration" clause on page three that covers "[A]ny dispute arising out of or relating to this Contract shall be settled by final and binding arbitration" and the language "In the event a dispute is brought between the Lienholder and the Vehicle owner, and the Administrator is made a party to that arbitration, then in that event the arbitration provision contained in the Sales Finance Agreement shall govern." Given that Wynn's prepared these terms and submitted them to Mrs. Bradley, we think Wynn's knowingly and voluntarily agreed to be bound by them.

Thus, we think the core assertion of your Motion to Dismiss, that "Wynn's has not agreed to arbitration" does not reflect the contractual arrangement between the parties. As your Motion recognizes, Mrs. Bradley originally sought to have this matter resolved in Court and tried to limit the dispute to just the dealer and Credit Acceptance. We actually filed a simple state court claim but the action was removed by the Defendants. They compelled arbitration over our objection. Thus, we are very sensitive to any person being denied access to the process and protections of the American judicial system. We encourage Wynn's to remove the arbitration clause from its contracts if it wants the benefits and protections of the American judicial system.

Based on what we were told in informal discovery, and after our efforts at settlement failed, we brought in Wynn's. Because the matter had been sent to arbitration and because we assumed that Wynn's would also assert a contractual right to arbitration it had placed in its own documents, we included Wynn's in the arbitration.

Virginia M. Sadler, Esquire

November 27, 2013

Page 2

Now that we know that Wynn's does not want to assert a contractual right to arbitration, and because parties to a contract can agree to a modification, we would be willing to discuss with you how we carve out the claim against Wynn's from this arbitration. Our main concern at this point is avoiding delay on resolving the claims.

Therefore, please let us know if Wynn's will agree to the following:

1. Neither Wynn's nor Penny Bradley want the dispute between them resolved in arbitration.
2. Wynn's and Penny Bradley agree that the dispute should be resolved in court.
3. Wynn's and Penny Bradley agree that the Court with jurisdiction to hear this dispute is the Rockingham County Circuit Court.
4. Penny Bradley agrees to file her Complaint against Wynn's in that court within thirty days of the signing of this agreement.
5. The parties agree that in that court action, that neither party will claim that the arbitration against the dealer and CAC provides any basis for a continuance, an extension, a stay, or any delay.
6. Within seven days of the signing of this agreement, Penny Bradley will file a request with JAMS to dismiss Wynn's from the arbitration without prejudice.

If Wynn's will not agree to the above, then we ask you to reconsider the jurisdictional basis of your Motion to Dismiss. If you have any questions, please do not hesitate to call.

Very truly yours,



Timothy E. Cupp

Enclosure

By the Lienholder.

You understand and acknowledge that the Lienholder (if any) has the right to cancel this Contract if the Vehicle is repossessed or destroyed or You are otherwise in default of Your obligations to repay the amount financed by the Lienholder.

#### Refunds and Charges

You will be entitled to a full refund of the Contract Price if You provide a written notice of cancellation to the Administrator or Lienholder within the first thirty (30) days after the Contract purchase date, and if You have not filed a claim under this Contract. If You provide a written notice of cancellation to the Administrator or Lienholder after the first thirty (30) days after the Contract purchase date, or if We or the Lienholder cancels this Contract at any time, You will be entitled to a prorated refund of the Contract Price (less a \$50.00 cancellation fee) based on the greater of the number of days the Contract was in force or the miles driven compared to the total time or Vehicle mileage specified on the first page of this Contract under "Coverage Term." Your cancellation notice must be accompanied by a copy of an odometer disclosure statement or equivalent document verifying the current mileage of the Vehicle. The term of this Contract for cancellation purposes will be based on the date You purchased Your Contract and the Vehicle mileage on the date purchased. If the Contract Price was financed, any and all refunds will be paid to the Lienholder. If the Contract Price was not financed, any and all refunds will be paid to You by the Selling Dealer.

## OTHER IMPORTANT CONTRACT PROVISIONS/LIMITATIONS

#### Limits of Our Liability

The Limit of Our Liability for any Covered Breakdown or series of Covered Breakdowns related in time or cause shall not exceed the actual cash value of Your Vehicle at the time of Covered Breakdown as determined by the Administrator in its sole discretion in accordance with the then current National Auto Dealers Association Appraisal Guide Trade-in Price. The Limit of Our Liability for all Covered Breakdowns occurring during the term of this Contract is the amount of the Vehicle purchase price. These limits are referred to in this Contract as "Limits of Liability."

#### Our Rights Against Others

If You receive any benefits under this Contract, We will be entitled to all Your rights of recovery against any manufacturer, repairer or other party who may be responsible to You for the costs covered by this Contract or for any other payment made by Us. If We ask, You agree to help Us enforce these rights. You also agree to cooperate and help Us in any other matter concerning this Contract.

#### Entire Agreement

This Contract contains the entire agreement between You and Us and supersedes any and all prior and contemporaneous agreements (both written and verbal) between You and Us concerning the subject matter of this Contract. This Contract is not valid unless signed by both You and an authorized representative of the Selling Dealer.

#### When this Contract will End

This Contract will terminate when:

- Your Vehicle reaches the time or mileage limitation specified on the first page of this Contract;
- You sell Your Vehicle unless this Contract is properly transferred as provided in the section of this Contract entitled "How Coverage May Be Transferred;" or
- This Contract is cancelled as outlined in the "Cancellation Of This Contract" section above.

#### Arbitration

Any dispute arising out of or relating to this Contract shall be settled by final and binding arbitration.

• Governing Law and Venue. The arbitration shall be conducted before a panel of three arbitrators.

Any judgment and/or award that the arbitrators render may be entered and enforced by any court of competent jurisdiction. The arbitration shall take place in Orange County, California, unless the parties agree otherwise. The parties consent to personal jurisdiction before any court located in the state in which the arbitration is held.

• Costs. Each party shall pay the fees of its own attorneys, the expenses of its witnesses, and all other expenses connected with the presentation of its case. The parties shall share equally the cost of arbitration and the fees charged by the arbitrators.

the Contract purchase date, or if We or the Lienholder cancels this Contract at any time, You will be entitled to a prorated refund of the Contract Price (less a \$25.00 cancellation fee) based on the greater of the number of days the Contract was in force or the miles driven compared to the total time or Vehicle mileage specified on the first page of this Contract under "Coverage Term." Your cancellation notice must be accompanied by a copy of an odometer disclosure statement or equivalent document verifying the current mileage of the Vehicle. The term of this Contract for cancellation purposes will be based on the date You purchased Your Contract and the Vehicle mileage on the date purchased. If the Contract Price was financed, any and all refunds will be paid to the Lienholder. A ten percent (10%) penalty per month will be added to any refund that is not paid or credited within forty-five (45) days after the Administrator or Lienholder receives Your request for cancellation. If the Contract Price was not financed, any and all refunds will be paid to You by the Selling Dealer.

#### Arizona

1. Under the section entitled "Definitions", "Contract" is amended to include: This Vehicle Service Contract agreement is effective on the date of sale by the Selling Dealer and any cancellation of the Contract or the Contracts coverage(s) are subject to all the provisions stated by the Arizona Administrative Code ("A.A.C.") rule number R20-6-407(E)(4).

2. In the "Arbitration" section under "Other Important Contract Provisions/Limitations" the second sentence under the first bullet point • Governing Law and Venue is amended to read: "The arbitration shall take place in Arizona."

3. The following is added to the "Arbitration" section under "Other Important Contract Provisions/Limitations": "Arbitration does not prevent You from filing a complaint with the Arizona Department of Insurance (A.D.O.I.) for any remedy, including those subject to the provisions stated by A.R.S. §§ 20-1095.04 and 20-1095.09. You may contact the A.D.O.I. at 1-800-325-2948. The A.D.O.I. address is 2910 N. 44th St., Suite 210, Phoenix, AZ 85018-5556 Attention: Consumer Affairs Division."

4. Item A.2 under "Exclusions" — What This Contract Does Not Cover" is amended to read: A.2 A Breakdown caused by contamination of or lack of proper fuels, coolants or lubricants, including a Breakdown caused by a failure to replace seals or gaskets in a timely manner after You purchased the Vehicle from the Selling Dealer.

5. Item A.5 under "Exclusions" — What This Contract Does Not Cover" is deleted in its entirety. Item A.6 under "Exclusions" — What This Contract Does Not Cover" is amended to read: A.6 A Breakdown caused by or involving modification or additions to Your Vehicle by You or with Your knowledge unless those modifications or additions were performed or recommended by the Vehicle Manufacturer.

6. Item A.7 under "Exclusions" — What This Contract Does Not Cover" is amended to read: A.7 A Breakdown caused by off-roading, misuse, abuse, racing or any form of competition after You purchased the Vehicle from the Selling Dealer.

7. Item B.6 under "Exclusions" — What This Contract Does Not Cover" is amended to read: B.6 Your Vehicle is modified from the Vehicle Manufacturer's original specifications by You or with Your knowledge.

8. Item B.7 under "Exclusions" — What This Contract Does Not Cover" is amended to read: B.7 The section entitled "Cancellation Of This Contract" — By Us" the last bullet is amended to read: Your Vehicle is modified by You or with Your knowledge from the Vehicle Manufacturer's original specifications.

9. The section entitled "Cancellation Of This Contract" — By Us" the last bullet is amended to read: Your Vehicle is modified by You or with Your knowledge from the Vehicle Manufacturer's original specifications.

10. The section entitled "Cancellation Of This Contract" — Refunds And Charges" is amended to include the following: No claim incurred or paid shall be deducted from the amount to be refunded. State Law and Administrative Code supersede any other provisions herein. We are primarily responsible for providing any refund to You to which You may be entitled under this Contract.

#### Arkansas

1. The following sentence is added at the top of the first page of this Contract: "Purchase of this Contract is not required in order to purchase or obtain financing for a motor vehicle."

2. The paragraph under the Customer Signature section on the first page of this Contract is replaced with the following paragraph:

"THIS SERVICE CONTRACT IS INSURED FOR ITS LIABILITY UNDER A SERVICE CONTRACT MEMBER COMPANY OF THE NATIONALWIDE INSURANCE GROUP. IF WE DO NOT SELL YOUR CLAIMS, AS ADMINISTRATOR WITHIN SIXTY (60) DAYS OF OUR RECEIPT OF YOUR PROOF OF LOSS, YOU MAY MAKE A CLAIM DIRECTLY AGAINST: NATIONAL CASUALTY COMPANY, P.O. BOX 4110, SCOTTSDALE, AZ 85261-4110. THE TOLL-FREE TELEPHONE NUMBER FOR NATIONAL CASUALTY COMPANY IS (800) 423-7675."

3. The section entitled "Arbitration" is deleted.

#### California

Performance to You under this Contract is guaranteed by a California approved insurance company. You may file a claim with this insurance company if any promise made in the Contract has been

coverage specified below that you are entitled to receive. This Contract does not cover subject to the exclusions listed in the "Exclusions—What This Contract Does Not Cover" section below. For convenience, the Covered Parts are listed next to the vehicle systems to which they relate. The Vehicle Systems listed are not Covered Parts.

#### Wynn's Plus Deluxe Coverage

1. Engine—All Internal Lubricated Parts, cylinder block, cylinder head(s), harmonic balancer, turbocharger, supercharger, timing gear, chain and bolt, (diesel injectors and injection pump are covered if selected on first page of Contract and surcharge is paid at the time of sale).
2. Transmission—Transmission case and all Internal Lubricated Parts, torque converter and vacuum modulator.
3. Drive Axle(s)—Drive axle housing and all Internal Lubricated Parts, drive shafts, universal joints, and constant velocity joint (unless failure was caused by neglected, torn, cracked or perforated constant velocity joint boot).
4. Transfer Case—Transfer case and all Internal Lubricated Parts.
5. Steering—Steering gear box or rack and all Internal Lubricated Parts, power steering pump, steering column shaft, steering column shaft couplings, tie rod ends, draglink, pitman arm and idler arm.
6. Electrical—Alternator, voltage regulator, starter motor and starter solenoid.
7. Engine—Head gasket, timing cover, timing belt, intake and exhaust manifolds, valve covers, oil pan and engine mounts.
8. Transmission—Flex plate and transmission mounts.
9. Air Conditioner—Condenser, compressor, compressor clutch, pulley, evaporator and blower motor, only if the air conditioner is factory or dealer installed equipment.
10. Electrical—Ignition module, ignition coil, pole pieces and windshield wiper motors.
11. Suspension—Control arms, control arm shafts, bearings and bushings, radius arm, radius arm bushing, stabilizer bar, stabilizer link, stabilizer bushing, spindle, wheel bearings, and torsion bars.
12. Cooling—Water pump, engine cooling fan motor, radiator, radiator fan and fan clutch.
13. Fuel—Fuel delivery pump, fuel injectors and fuel tank.
14. Brake—Standard and ABS brake system master cylinder, ABS accumulator, ABS control module, ABS pump, ABS motor, ABS reservoir and ABS wheel speed sensors, power brake cylinder, vacuum assist booster, vacuum brake booster pump, compensating valve, disc brake calipers, wheel cylinders, hydraulic lines and hydraulic line fittings.
15. Seals and Gaskets—Leaking Seals and Gaskets on any Covered Part listed above, provided that the Used Vehicle has 100,000 odometer miles or less on the date of Contract Purchase.
16. High-Tech—(Coverage is included on Vehicles with 100,000 odometer miles or less on the date of Contract Purchase) Power seat motor, power antenna motor, power window motors, driver power door lock actuator, fuel pressure regulator, sunroof motor, convertible top motor, driver information gauge indicators relating to the operation of the Vehicle (burned out lights/lamps are not covered), control dash power supply, and cruise control module and servo/transducer,

out bearing.

23. Glass, glass framework and fastening adhesives, sealed beam headlamps, light bulbs, lenses, trim, moldings, bright metal, upholstery and carpeting, paint, sheet metal, body panels, structural framework and structural welds.
  24. Aftermarket accessories or non-original equipment, components and systems not installed by the Vehicle Manufacturer, including, without limitation, anti-theft systems, radio/speaker equipment, telephones, cruise control and sunroof.
  25. GPS navigation systems and TV/Video/Entertainment Systems.
  26. Damage to a Covered Part caused by a part that is not a Covered Part.
  27. Repairs performed without Our prior authorization.
- B. In addition, this Contract provides no benefits or coverage and We have no obligation under this Contract if:
1. The Vehicle odometer fails, or for any reason does not record the actual mileage of Your Vehicle after purchase date, and You do not have it repaired and the mileage certified within thirty (30) days of failure date.
  2. Your Vehicle is used for business, deliveries, construction or commercial hauling, or as a postal vehicle, taxi, police car or other emergency vehicle.
  3. You rent Your Vehicle to someone else.
  4. Your Vehicle is equipped with a snowplow or used to plow snow.
  5. You are using or have used Your Vehicle in a manner that is not recommended by the Vehicle Manufacturer.
  6. Your Vehicle is modified from the Vehicle Manufacturer's original specifications.
  7. Your Vehicle is equipped to use fuel other than gasoline or diesel.

#### HOW COVERAGE MAY BE TRANSFERRED

If You sell Your Vehicle, You may transfer this Contract to the new owner, but only if:

- You are the first holder of this Contract;
- Your Vehicle is sold to a private party;
- The Administrator receives from You the completed Transfer Request Form (see below) within thirty (30) days after the date You sell Your Vehicle;
- You pay the Administrator a \$50.00 transfer fee; and
- You provide the Administrator with copies of all Vehicle maintenance and service receipts required by this Contract (see "Your Obligations" section above).

The transfer will be effective when You receive a transfer confirmation letter from the Administrator. If the purchase of Your Vehicle was financed and Your Vehicle is a total loss or repossessed, Your rights and obligations under this Contract immediately and automatically transfer to the Lienholder.

Item No. 9M4224

2 of 6

#### TRANSFER REQUEST FORM

##### Administrator:

I am transferring this Contract in accordance with the provisions stated in this Contract. I am enclosing a \$50.00 check or money order payable to Wynn's Extended Care, Inc.\* I have provided to the new owner copies of all receipts for the maintenance and servicing of the Vehicle as required by this Contract.

Name of New Owner \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Date of Transfer \_\_\_\_\_

Odometer Mileage on Date of Transfer \_\_\_\_\_

Signature of New Owner \_\_\_\_\_

Date \_\_\_\_\_

Signature of Vehicle Seller \_\_\_\_\_

Date \_\_\_\_\_

#### TRANSFER APPLICATION

To transfer this Contract, complete the Transfer Request Form and mail it with a photocopy of the front of this Contract to the Administrator at the following address:

WYNN'S EXTENDED CARE, INC.\* - 6303 Blue Lagoon Dr., Suite 225, Miami, FL 33126

#### CANCELLATION OF THIS CONTRACT

##### By You

You may cancel this Contract by contacting the Administrator or Lienholder.

##### By Us

We reserve the right to cancel this Contract and will not pay for a Covered Breakdown if:

- The Vehicle odometer fails, or for any reason does not record the actual mileage of Your Vehicle after purchase date, and You do not have it repaired and the mileage certified within thirty (30) days of failure date.
- Your Vehicle is used for business, deliveries, construction or commercial hauling, or as a postal vehicle, taxi, police car or other emergency vehicle.
- You rent Your Vehicle to someone else.
- Your Vehicle is equipped with a snowplow or used to plow snow.
- You are using or have used Your Vehicle in a manner that is not recommended by the Vehicle Manufacturer.
- Your Vehicle is modified from the Vehicle Manufacturer's original specifications.

##### By the Lienholder

You understand and acknowledge that the Lienholder (if any) has the right to cancel this Contract if the Vehicle is repossessed or destroyed or You are otherwise in default of Your obligations to repay the amount financed by the Lienholder.

##### Refunds and Charges

You will be entitled to a full refund of the Contract Price if You provide a written notice of cancellation to the Administrator or Lienholder within the first thirty (30) days after the Contract purchase date, and if You have not filed a claim under this Contract. If You provide a written notice of cancellation to the Administrator or Lienholder after the first thirty (30) days after the Contract purchase date, or if We or the Lienholder cancels the Contract at any time, You will be entitled to a prorated refund of the Contract Price (less a \$50.00 cancellation fee) based on the greater of the number of days the Contract was in force or the miles driven compared to the total time or Vehicle mileage specified on the first page of this Contract under "Coverage Term." Your cancellation notice must be accompanied by a copy of an odometer disclosure statement or equivalent document verifying the current mileage of the Vehicle. The term of this Contract for cancellation purposes will be based on the date You purchased Your Contract and the Vehicle mileage on the date purchased. If the Contract Price was financed, any and all refunds will be paid to the Lienholder. If the Contract Price was not financed, any and all refunds will be paid to You by the Selling Dealer.

- **Discovery.** Each party shall be limited to the following pre-arbitration discovery: two (2) depositions, thirty (30) interrogatories, each consisting of no more than three parts; twenty (20) requests for production of documents, each consisting of no more than three parts; and twenty (20) requests for admission. Additional discovery shall be permitted at the discretion of the arbitrators.
- **No Punitive Damages or Interest.** The arbitrators shall not have authority to award punitive damages or interest, including pre-award interest, in any arbitration proceedings hereunder.
- **In the event a dispute is brought between the Lienholder and the Vehicle owner, and the Administrator is made a party to that arbitration, then in that event the arbitration provision contained in the Sales Finance Agreement shall govern.**

##### State Law Disclosures

Some of the states in which We are selling Vehicle Service Contracts require that We make certain additional disclosures to You or require that some of the terms and conditions of this Contract be different from the standard terms and conditions specified above. These additional disclosures and different terms and conditions are set forth below. They apply to You if You purchased this Contract in one of the states specified below.

##### Alabama

The paragraph under "Cancellation Of This Contract—Refunds And Charges" is replaced in its entirety with the following:

"You will be entitled to a full refund of the Contract Price if You provide a written notice of cancellation to the Administrator or Lienholder within the first thirty (30) days after the Contract purchase date, and if You have not filed a claim under this Contract. If You provide a written notice of cancellation to the Administrator or Lienholder after the first thirty (30) days after the Contract purchase date, or if We or the Lienholder cancels this Contract at any time, You will be entitled to a prorated refund of the Contract Price (less a \$25.00 cancellation fee) based on the greater of the number of days the Contract was in force or the miles driven compared to the total time or Vehicle mileage specified on the first page of this Contract under "Coverage Term." Your cancellation notice must be accompanied by a copy of an odometer disclosure statement or equivalent document verifying the current mileage of the Vehicle. The term of this Contract for cancellation purposes will be based on the date You purchased Your Contract and the Vehicle mileage on the date purchased. If the Contract Price was financed, any and all refunds will be paid to the Lienholder. A ten percent (10%) penalty per month will be added to any refund that is not paid or credited within forty-five (45) days after the Administrator or Lienholder receives Your request for cancellation. If the Contract Price was not financed, any and all refunds will be paid to You by the Selling Dealer."

1. Under the section entitled "Definitions", "Contract" is amended to include: This Vehicle Service Contract agreement is effective on the date of sale by the Selling Dealer and any cancellation of the Contract or the Contract's coverage(s) are subject to all the provisions stated by the Arizona Administrative Code ("A.A.C.") rule number R20-6-407(E4).
2. In the "Arbitration" section under "Other Important Contract Provisions/Limitations" the second sentence under the first bullet point • Governing Law and Venue is amended to read: "The arbitration shall take place in Arizona."
3. In the "Arbitration" section under "Other Important Contract Provisions/Limitations", "Arbitration does not prevent You from your rights to file a complaint with the Arizona Department of Insurance (A.D.O.I.) for any remedy, including those subject to the provisions stated by A.R.S. §§ 20-1095.04 and 20-1095.09. You may contact the A.D.O.I. at 1-800-325-2546. The A.D.O.I. address is 2910 N. 44th St., Suite 210, Phoenix, AZ 85018-7256"